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Attorneys for Emilie P. Ismail

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

Emilie P. Ismail	<b>Case No: '12CV0965 JM JMA</b>
Plaintiff,	<b>Complaint For Damages</b>
v.	<b>Jury Trial Demanded</b>
Hunt & Henriques; Portfolio Recovery Associates, LLC	
Defendants.	

**INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

HYDE & SWIGART  
 Riverside, California

collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.

3. Emilie P. Ismail, ("Plaintiff"), through Plaintiff's attorneys, brings this action to challenge the actions of Hunt & Henriques ("H&H"); Portfolio Recovery Associates, LLC ("PRA"), ("Defendants"), with regard to attempts by Defendants to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

5. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

6. Unless otherwise stated, all the conduct engaged in by Defendants took place in California.

7. Any violations by Defendants were knowing, willful, and intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violation.

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8. Any and all violations alleged against H&H are imputed to PRA under the theory of vicarious liability, because the actions undertaken by H&H were an attempt to collect the alleged debt by an attorney's office on behalf of PRA.

9. All violations alleged under the FDCPA are alleged against all named Defendants.

10. All violations alleged under the Rosenthal Act are alleged against all named Defendants.

### JURISDICTION AND VENUE

11. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

12. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

13. Because Defendants do business within the State of California, personal jurisdiction is established.

14. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

15. Defendants commonly conduct business in San Diego County, to include filing collections cases, and are subject to personal jurisdiction in San Diego County, therefore Defendants reside in this judicial district pursuant to 28 U.S.C. § 1391(c).

16. At all times relevant, Defendants conducted business within the State of California.

### PARTIES

17. Plaintiff is a natural person who resides in the State of California.

18. Defendant H&H is located in the State of California.

19. Defendant PRA is located in the State of Virginia.

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20. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

21. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

22. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

23. Defendants, in the ordinary course of business, regularly, on behalf of themselves, or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), are therefore debt collectors as that term is defined by California Civil Code § 1788.2(c).

24. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

25. Sometime before January 13, 2012, Plaintiff is alleged to have incurred certain financial obligations.

26. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

27. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil

1 Code §1788.2(d), and a “consumer debt” as that term is defined by California  
2 Civil Code §1788.2(f).

3 28. Sometime thereafter, but before January 13, 2012, Plaintiff allegedly fell  
4 behind in the payments allegedly owed on the alleged debt. Plaintiff currently  
5 takes no position as to the validity of this alleged debt.

6 29. Subsequently, but before January 13, 2012, the alleged debt was assigned,  
7 placed, or otherwise transferred, to Defendants for collection.

8 30. On or about January 13, 2012, H&H mailed a letter to Plaintiff, on behalf of  
9 its client PRA, demanding payment of the alleged debt. A few days later  
10 Plaintiff received that letter.

11 31. This communication to Plaintiff was a “communication” as that term is  
12 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent  
13 with 15 U.S.C. § 1692g(a).

14 32. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)  
15 defines that phrase, and an “initial communication” consistent with Cal. Civ.  
16 Code § 1812.700(b).

17 33. In its January 13, 2012 letter, H&H stated that the “[b]alance due as of  
18 January 13, 2012” was “\$8,873.32”.

19 34. On or about March 13, 2012, Defendant PRA, through its counsel H&H, filed  
20 a state court collections action against Plaintiff seeking to collect the alleged  
21 debt.

22 35. In the state court complaint, Defendants prayed for \$5,570.82 as the principal  
23 alleged debt accruing interest at the rate of 0.0000%.

24 36. On or about March 23, 2012, 10 days after filing suit against Plaintiff, H&H  
25 acting on behalf of PRA, sent Plaintiff a second letter demanding payment of  
26 the alleged debt. A few days later Plaintiff received that letter.

27 37. In its March 23, 2012 letter, H&H stated that “current balance due is  
28 \$5,810.82”.

38. Through this conduct, Defendant used a false, deceptive, or misleading representation or means in connection with the collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

39. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

40. Through this conduct, Defendant made a false representation concerning the character, amount, or legal status of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e(2)(A).

41. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

42. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.

43. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

44. Through this conduct, Defendant was collecting an amount (including any interest, fee, charge, or expense incidental to the principal obligation) when such amount was not expressly authorized by the agreement creating the debt or permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).

45. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal

1 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,  
2 this conduct or omission violated Cal. Civ. Code § 1788.17.

3 **CAUSES OF ACTION**

4 **COUNT I**

5 **AS TO ALL NAMED DEFENDANTS**

6 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

7 **15 U.S.C. §§ 1692 ET SEQ.**

8 46. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
9 paragraphs.

10 47. The foregoing acts and omissions constitute numerous and multiple violations  
11 of the FDCPA, including but not limited to each and every one of the above-  
12 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

13 48. As a result of each and every violation of the FDCPA, Plaintiff is entitled to  
14 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in  
15 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,  
16 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from  
17 each and every defendant, jointly and severally.

18 **COUNT II**

19 **AS TO ALL NAMED DEFENDANTS**

20 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)**

21 **CAL. CIV. CODE §§ 1788-1788.32**

22 49. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
23 paragraphs.

24 50. The foregoing acts and omissions constitute numerous and multiple violations  
25 of the Rosenthal Act, including but not limited to each and every one of the  
26 above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

27 51. As a result of each and every violation of the Rosenthal Act, Plaintiff is  
28 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);

1 statutory damages for a knowing or willful violation in the amount up to  
 2 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's  
 3 fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every  
 4 defendant, jointly and severally.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays that judgment be entered against each Defendant,  
 7 jointly and severally, and Plaintiff be awarded damages from each Defendant, as  
 8 follows:

- 9 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §  
 10 1692k(a)(2)(A);
- 11 • An award of costs of litigation and reasonable attorney's fees, pursuant  
 12 to 15 U.S.C. § 1692k(a)(3);
- 13 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code  
 14 § 1788.30(b);
- 15 • An award of costs of litigation and reasonable attorney's fees, pursuant  
 16 to Cal. Civ. Code § 1788.30(c).

17 52. Pursuant to the seventh amendment to the Constitution of the United States of  
 18 America, Plaintiff is entitled to, and demands, a trial by jury.

19  
 20 Respectfully submitted,

21 **Hyde & Swigart**

22  
 23 Date: April 17, 2012

24 By: s/ Andrea Darrow Smith  
 25 Andrea Darrow Smith  
 26 Attorneys for Plaintiff  
 27  
 28



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Emilie P. Ismail

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
4129 Main Street, Suite B8, Riverside, CA 92501; (951) 784-7770

**DEFENDANTS**

Hunt &amp; Henriques; Portfolio Recovery Associates, LLC

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**'12CV0965 JM JMA****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 U.S.C. § 1692 et seq.**

Brief description of cause:  
**Unfair Debt Collection Practices**

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**  
**75,001.00+**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/18/2012

s/Andrea Darrow Smith

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_